

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1084**

**Introduced by Assembly Member Vargas**

February 22, 2005

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An act to amend Section 10290 of, and to add Sections ~~10370, 10371, 10371~~, 10371 and 10372 to, the Insurance Code, relating to disability insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1084, as amended, Vargas. Policy terms.

Existing law generally regulates health insurance. Existing law prohibits a health insurance policy from being issued or delivered until certain documents are filed with the Insurance Commissioner, and a period of 30 days expires after this filing or the commissioner gives his or her written approval prior to that time.

This bill would change the 30-day period to 30 business days.

Existing law generally regulates disability income insurance, which is insurance against loss of occupational earning capacity arising from injury, sickness, or disablement. Existing law allows disability income insurance policies to include certain optional provisions.

This bill would ~~allow a group disability income insurance policy to contain provisions for a rehabilitation program. It would also allow a~~ *disability income insurance* policy of this type to contain a provision stating that benefits shall not be payable unless the insured is covered under a health insurance policy and is receiving care by a licensed physician that, under prevailing medical standards, is appropriate for the condition causing the disability, except as specified. The bill would also set forth provisions for the payment of additional disability income benefits.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 10290 of the Insurance Code is  
2 amended to read:

3 10290. A disability policy shall not be issued or delivered to  
4 any person in this state until each of the following occurs:

5 (a) A copy of the form thereof and, if more than one class of  
6 risks is written, of the classification of risks, and the premium  
7 rates pertaining thereto are filed with the commissioner.

8 (b) Either of the following occurs:

9 (1) A period of 30 business days expires without notice from  
10 the commissioner after the copy is filed.

11 (2) The commissioner gives his or her written approval prior  
12 to that time.

13 ~~SEC. 2. Section 10370 is added to the Insurance Code, to~~  
14 ~~read:~~

15 ~~10370. (a) A group disability income insurance policy, as~~  
16 ~~defined in subdivision (i) of Section 799.01, may contain~~  
17 ~~provisions for a rehabilitation program, provided that each of the~~  
18 ~~following is true with respect to the covered employee with a~~  
19 ~~disability:~~

20 ~~(1) The employee is currently eligible to receive disability~~  
21 ~~income benefits under the policy.~~

22 ~~(2) The employee shall not incur any costs for services~~  
23 ~~provided under the rehabilitation program.~~

24 ~~(3) The employee is physically, cognitively, and mentally able~~  
25 ~~to participate in the program.~~

26 ~~(4) The employee is reasonably expected to return to active~~  
27 ~~employment in his or her occupation or another occupation with~~  
28 ~~the assistance of the program.~~

29 ~~(5) The employee is currently covered under a health~~  
30 ~~insurance policy.~~

31 ~~(b) (1) The provisions allowed by subdivision (a) may require~~  
32 ~~a covered employee who is currently receiving disability income~~  
33 ~~benefits to participate in a physical or vocational rehabilitation~~  
34 ~~program if a certified rehabilitation professional and the covered~~  
35 ~~employee's physician agree that the covered employee is~~

1 ~~physically, cognitively, and mentally able to participate in a~~  
2 ~~rehabilitation program and that this participation could~~  
3 ~~reasonably be expected to result in a return to active~~  
4 ~~employment.~~

5 ~~(2) The provisions may also require a covered employee to~~  
6 ~~participate in a rehabilitation program for the duration of his or~~  
7 ~~her claim.~~

8 ~~(3) Benefits shall be continued for a covered employee who~~  
9 ~~attempts to participate in the program, but is unable to continue~~  
10 ~~that participation because he or she remains disabled under the~~  
11 ~~policy, subject to all other policy provisions.~~

12 ~~(c) Nothing in this section shall allow the insurer issuing the~~  
13 ~~group policy to direct medical treatment under a rehabilitation~~  
14 ~~program.~~

15 ~~(d) Insurers issuing policies with the rehabilitation provisions~~  
16 ~~described in subdivision (a) may also be permitted to offer~~  
17 ~~policies that do not contain those provisions.~~

18 ~~(e) Neither inclusion of, nor participation in, a rehabilitation~~  
19 ~~program authorized by this section is intended to affect existing~~  
20 ~~decisional law of California or existing policy provisions in~~  
21 ~~issued contracts.~~

22 ~~(f) For purposes of this section, a rehabilitation program~~  
23 ~~includes vocational rehabilitation and physical rehabilitation.~~  
24 ~~Vocational rehabilitation includes, but is not limited to, any~~  
25 ~~necessary and feasible vocational testing, vocational training,~~  
26 ~~workplace modification, and assistance in locating suitable~~  
27 ~~employment. Physical rehabilitation includes, but is not limited~~  
28 ~~to, any necessary and feasible occupational therapy, physical~~  
29 ~~therapy, speech therapy, and work conditioning.~~

30 ~~(g) For the purposes of this section, “certified rehabilitation~~  
31 ~~professional” means any of the following: certified rehabilitation~~  
32 ~~counselor, certified case manager, certified vocational evaluator,~~  
33 ~~certified disability management specialist, licensed physical~~  
34 ~~therapist, licensed occupational therapist, licensed speech~~  
35 ~~language pathologist, or registered nurse. “Certified~~  
36 ~~rehabilitation professional” shall not include a person who does~~  
37 ~~not comply with any certification or licensing requirement under~~  
38 ~~California law.~~

1     ~~SEC. 3.~~

2     ~~SEC. 2.~~ Section 10371 is added to the Insurance Code, to  
3 read:

4     10371. (a) A disability income insurance policy, as defined  
5 in subdivision (i) of Section 799.01, may contain a provision that  
6 provides that benefits shall not be payable unless the insured is  
7 receiving care by a licensed physician that, under prevailing  
8 medical standards, is appropriate for the condition causing the  
9 disability. This requirement will be deemed to have been met if  
10 the insurer receives written proof that, under prevailing medical  
11 standards, further care ~~by a physician would not be of benefit to~~  
12 ~~the insured~~ *would not be reasonably expected to improve the*  
13 *insured's condition or functional ability.*

14     (b) This section shall not apply to an insured, unless the  
15 insured is covered under a health insurance policy.

16     (c) *The insurer may require that the physician treating the*  
17 *claimant not be any of the following:*

18     (1) *The claimant.*

19     (2) *The claimant's spouse or domestic partner.*

20     (3) *Related to the claimant's spouse or domestic partner.*

21     (4) *Employed by, or have a business relationship with, the*  
22 *claimant.*

23     ~~SEC. 4.~~

24     ~~SEC. 3.~~ Section 10372 is added to the Insurance Code, to  
25 read:

26     10372. (a) The Legislature finds and declares the following:

27     (1) Employees with a disability often encounter extraordinary  
28 expenses not covered by financial resources.

29     (2) Not all individuals have the financial resources to purchase  
30 long-term care insurance.

31     (3) It is good public policy to make available through group or  
32 individual disability income policies additional disability income  
33 benefits when employees with a disability find themselves unable  
34 to perform certain activities of daily living.

35     (b) A disability income insurance policy, as defined in  
36 subdivision (i) of Section 799.01, may contain provisions for the  
37 payment of additional disability income benefits. An employee  
38 covered under a group or individual disability income policy may  
39 be required to establish eligibility for disability income benefits  
40 only once and shall not be required to reestablish eligibility if,

1 subsequently, the employee with a disability makes a claim for  
2 additional disability income benefits. Eligibility for additional  
3 disability income benefits shall be established if the employee  
4 with a disability is determined to be unable to perform no fewer  
5 than two activities of daily living. The determination of  
6 eligibility shall be made in writing by a licensed health care  
7 practitioner, and an insurer may seek independent confirmation  
8 of the health care practitioner's findings. Additional disability  
9 income benefits shall be paid as long as the employee with a  
10 disability remains eligible for disability income benefits and  
11 continues to be unable to perform no fewer than two activities of  
12 daily living. Additional disability income benefits may be  
13 utilized by the employee with a disability in any manner he or  
14 she determines. The certificate issued in conjunction with a  
15 group disability income policy containing provisions for the  
16 payment of additional disability income benefits shall  
17 prominently note that the additional benefits are not long-term  
18 care insurance and are not intended as a substitute for long-term  
19 care insurance. For purposes of this section, activities of daily  
20 living are bathing, dressing, continence, toileting, transferring,  
21 and eating.